

401 KAR 8:040. Laboratory certification.

RELATES TO: KRS 224.10-100, 40 C.F.R. 141.21, Appendix A-Subpart C, 141.201, Appendices A, B of Subpart Q, EO 2009-538

STATUTORY AUTHORITY: KRS 224.10-100(4), (5), (28), 224.10-110(2), 40 C.F.R. 141.28, 42 U.S.C. 300f-300j-26, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 224.10-110\(2\)](#) requires the cabinet to enforce the administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet. This administrative regulation establishes procedures for certification of commercial or water system laboratories to test for drinking water contaminants.

Section 1. Laboratory Certification. (1) The U.S. Environmental Protection Agency or the cabinet shall evaluate a public water system laboratory or a commercial laboratory that performs drinking water analysis for a public water system for certification.

(2) Contracting by the cabinet with a third party to conduct laboratory evaluations and make recommendations to the cabinet regarding certification shall be in accordance with the Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance.

(3)(a) Certification may be for one (1) or more analysis categories or for a single drinking water contaminant within an analysis category.

(b) Each analysis category shall require a different certification, but qualification for different certifications may be evaluated during one (1) audit.

Section 2. Application. (1) An initial certification request may be made at any point during the calendar year.

(2) A laboratory seeking certification shall submit a written request for certification to the cabinet. The request shall include:

(a) A statement of the analysis category or drinking water contaminant for which certification is requested;

(b) A list of the analytic methods for each analysis for which certification is requested;

(c) Payment of the fee established in [401 KAR 8:050](#), Section 2(5) for the certification requested; and

(d) Completion of a Performance Evaluation (PE) study for each analysis category or drinking water contaminant for which certification is requested.

(3) The cabinet may request other information necessary to determine eligibility for certification as described in the Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance.

(4)(a) An applicant who has been decertified in accordance with the Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance for an analysis category or drinking water contaminant may request recertification in accordance with this section.

(b) The applicant for recertification shall pay the fee established in [401 KAR 8:050](#), Section 2(4).

Section 3. Public Water System Laboratory. (1) A Public water system may establish a laboratory. Each laboratory shall be certified annually.

(2) Failure to achieve or maintain annual certification shall not relieve the public water system of the responsibility to report results of the required analyses from a certified laboratory.

Section 4. Requirements. Maintenance of certification shall require the following:

(1) Analysis. Analyses for drinking water contaminants shall be performed in accordance with the appropriate approved method established in [40 C.F.R. Subpart C, 141.21 through Appendix A](#);

(2) Submission of analysis results. The result of each analysis performed in a certified laboratory by or for a public water system shall be submitted to the cabinet by the tenth day of the month following the compliance period for which the analysis was performed and shall be submitted to the public water system as soon as possible. The public water system shall be responsible for this reporting requirement; and

(3) Performance evaluation sample. A performance evaluation (PE) sample shall be analyzed for each analysis category or drinking water contaminant for which certification is requested, and the results shall be submitted to the cabinet at times specified in the Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance not to exceed twice a year, unless additional results shall be required in accordance with the Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance.

Section 5. Deviations. (1) Deviation from accepted practice specified in the Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance listed on a report resulting from an on-site inspection, shall be corrected.

(2) A written explanation of the deviation and action taken to correct it shall be submitted to the cabinet within thirty (30) days of the issuance of the inspection report.

Section 6. Violations. (1) A laboratory shall report any violation of a maximum contaminant level or other violation requiring Tier 1 public notification pursuant to [401 KAR 8:070](#) to the public water system and the cabinet within twenty-four (24) hours of sample analysis, in accordance with [40 C.F.R. 141.201-141.211, Appendices A and B](#).

(2) A public water system shall begin check sampling within twenty-four (24) hours of notification of a violation.

(3) Emergency provision. A laboratory shall make provisions to receive and test samples twenty-four (24) hours a day during an emergency.

Section 7. Right of Entry. A certified laboratory shall permit the cabinet to conduct on-site surveys during normal business hours, without prior notification.

Section 8. Revocation of certification and downgrading of certification shall be in accordance with the procedures established in the Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance.

(1) A laboratory that has been notified of a change of certification shall, within seventy-two (72) hours, notify the public water systems that the laboratory serves of the change in certification status and any impact that change could have on the public water system.

(2) A laboratory may provide monitoring reports by subcontracting with a laboratory that is certified by the cabinet.

Section 9. Recognition of an Out-of-state Laboratory. (1) The cabinet shall recognize a laboratory located outside Kentucky upon submission of proof by the laboratory that it is certified by the Environmental Protection Agency, or by a state having primary enforcement responsibility for the provisions of the Safe Drinking Water Act, 42 U.S.C. 300f through 300j-26, or that is certified pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f through 300j-26, requirements.

(2) A water system located in Kentucky that has entered into a contract with a certified out-of-state laboratory shall comply with time intervals and capabilities established in the Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance.

(3) If on-site inspection shall be conducted for certification of an out-of-state laboratory, the laboratory shall bear the cost.

Section 10. Incorporation by Reference. (1) "Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance; Fifth Edition, January 2005", Publication EPA 815-R-05-004, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (17 Ky.R. 597; Am. 1432; eff. 11-15-1990; 20 Ky.R. 3019; eff. 7-27-1994; 33 Ky.R. 1641; 3606; eff. 6-13-2007; 35 Ky.R. 1844; 2677; eff. 7-6-2009; 36 Ky.R. 1110; 1923; eff. 3-5-2010.)